IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.11.2006

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.34269 & 34270 of 2006

and W.P.M.P.Nos.1 & 2 of 2006

United Labour Federation
Rep.by its General Secretary,
No.149, IV Floor, C.J.Complex,
Thambu Chetty Street,
Chennai. 600 001.

... Petitioner in both W.Ps.

Vs.

The Management of Rickitt Benckiset (India) Ltd.,
Rep.by its Manufacturing Co-ordinator
No.176, Sipcot Industrial complex,
Hosur - 635 126. ... Respondent in both W.Ps.

PRAYER IN W.P.No.34269 of 2006: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Declaration declaring the voluntary retirement scheme of the respondent company called VRS-2006 applicable to the workers in the pest control division of the Hosur factory of the respondent company, as being illegal and violative of Section 9-A of the Industrial Disputes Act and issue.

PRAYER IN W.P.No.34270 of 2006: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus forbearing the respondent Management from effecting any further illegal deductions from the wages of the members of the petitioner union working in the pest control division of the Hosur factory of the respondent company including deductions under the guise of paying them 'pro-rata wages' and direct the respondent to appropriately reimburse to the members of the petitioner union the amounts deducted from their wages for the months of April to August 2006.

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For Petitioner : Mr.V.Prakash, S.C.
for Mr.Ramapriya Gopalakrishnan

For Respondent : Mr.A.L.Somayajee, S.C.
for Mr.T.S.Gopalan

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O R D E R

The United Labour Federation represented by its General Secretary has filed these writ petitions for declaration that Voluntary Retirement Scheme called V.R.S.2006 made applicable to the Pest Control Division, Hosur factory of the respondent company as illegal and violative of Section 9(A) of the Industrial Disputes Act, and another Writ Petition forbearing the respondent/Management from effecting any deduction from the wages of the members of the petitioner Union working in the Pest Control Division, Hosur factory including deduction under the guise of paying pro-rata wages and directing the respondent to appropriately reimburse to the members of the petitioner Union, the amounts already deducted for the months of April 2006 to August 2006.

2. According to the petitioner Union, the respondent company is a Multi National Company, operating factories at at Mysore, Hosur, Katla West Bengal, Dadka West Bengal and it is a private company. The Hosur factory is involved in the manufacture of mosquito repellent coils, mats and arousal sprays in the name of MORTEIN under the brand name Haze and the ingredient for another company's products by name DETTOL. In July 2004, 27 workers joined in the petitioner Union. Thereafter, another 48 persons joined on 30th August 2004, and on 29th September 2004 another 16 more permanent workers joined and totally 91 workers have become the members of the petitioner Union and the petitioner Union has become the majority union.

3. According to the petitioner Union, the respondent has terminated 4 of the 27 workers, who were appointed as Operator Trainees and subsequently, designated as permanent workmen for a period of 15 months and the petitioner Union has raised an Industrial Dispute, which is pending in I.D.No.235 of 2005. Subsequently, in respect of shifting of the manufacturing line outside the factory and claiming permanency of contract workers engaged in manufacturing process in the factory and for payment of incentives, the petitioner Union has also raised an Industrial Disputes pending in I.D.No.24 of 2005. It is due the threat by the management, 6 members of the petitioner Union have left the petitioner Union. The management has dismissed 5 workmen from service namely P.K.Rakesh Babu, R.Tamilarasan, V.Vijayakumar, R.Kumar and R.Yasin Sherif and filed approval petitions in A.P.No.27 to 31 of 2005 under Section 33 (2)(b) of the Industrial Disputes Act, and the same is pending before the Tribunal.

4. It is also the case of the petitioner Union that since unfair labour practice have been committed, threatening and discouraging the workers from joining the petitioner Union and abuse of disciplinary powers, W.P.No.4378 of 2005 was filed to prosecute the concerned officer of the respondent management and the same is pending.

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5. In respect of the using of stamping machines for punching at the speed of 18 strokes per minute, when the same was increased to 25 strokes per minute, which is abnormal, the petitioner Union has raised an Industrial Disputes which is also pending before the Industrial Tribunal, Chennai in I.D.No.4 of 2006. Regarding the safety and protection of the employees in the Pest Control Division, the petitioner Union filed W.P.No.34748 of 2004 and the same is pending. That apart, it is the case of the petitioner Union that when one Balaji was terminated, an Industrial Disputes under Section 2(A) was raised and the same is pending before the Labour Court, Salem. In June 2005, when the management has adopted the policy of "no work no pay", in spite of the fact that the workers have attended but they were not provided necessary equipments, W.P.No.1563 of 2006 was filed seeking for adjudication and there has been a direction by this Court and the matter was ultimately referred to the Labour Court, Salem in I.D.No.124 of 2006. When 7 workers in the coil manufacturing operation were sought to be deputed to another employer M/s.Icome house at Gowahathi which was not permissible under the standing orders, an Industrial Disputes was raised on the basis of unfair labour practice and the same is pending in W.P.No.23291 of 2006. It is under the threat of such deputation, 8 members of the petitioner Union were forced to resign from the Union. In another instance, one of the members of the petitioner Union, one Munivel was kept under suspension, against the standing order and an Industrial Disputes was raised, which is pending in I.D.No.122 of 2006. Similarly, in respect of one K.Sreedhar who is the member of the petitioner Union, when he was imposed with a punishment of suspension for 3 days in violation of the standing order, I.D.No.123 of 2006 was raised and the same is pending. In respect of the charter of demands, the petitioner Union has raised I.D.No.15 of 2006 which is pending. Therefore, according to the petitioner Union, by the conduct of the respondent Management, the members of the petitioner Union were forced to go out of the Union and by threat directed the others to approach the Labour Court and with a view of indirectly forcing the closure of the Union as such.

6. It is also the case of the petitioner Union that originally, when 450 contract workers were employed in the Pest Control Division, Hosur factory, in 2005 the contract workers have been removed, with the result the work done by all the said contract workers, have been entrusted to the regular employees who are compelled to do the work done by the contract workers, apart from the regular work allotted to them. That apart, the management is also wilfully stopping the production of mats in the Hosur factor. The management has also been keeping the machines idle, since December 2005, without prior notice, but at the same time sub contract, the production work to other private establishments and arbitrarily deducted the produced linked allowance payable to the workers for the month of December 2005 and January 2005 on the ground that the production has come down below the agreed norms and it is in contravention of the wage settlement dated 27.12.2002. In respect of keeping the coil punching machine idle except one or two, industrial dispute has been raised

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consequence on the failure report. Finally, it was on 26.04.2006, the respondent management has put up in the notice board falsely alleging that there has been "go slow" by the workers and also giving individual notice to workers stating that the normal production has come down and therefore, directing that the wages should be paid only on pro-rata basis linked to the production. It was based on that there has been massive deduction from the wages of all the workers in the factory from April 2006 on wards.

7. According to the petitioner Union, for the month of April, May, June, July and August 2006, the management has deducted 52%, 34%, 39%, 41% and 63% of workers' wages, with the result the wages earned by the workers for the month of August 2006 have come down remarkably to the average of Rs.1500 per month. According to the petitioner Union, the massive deduction from the wages of the workers working in the Hosur factory is arbitrary and malafide, for, according to the petitioner Union, the production has come down not due to the "slow down" but because of keeping idle the machines of the factory, contracting out of factory works to third parties and reducing the work force in the factory. The deduction have been effected in violation of Industrial Disputes Act, and payment of Wages Act, and the action is contrary to the terms of settlement and also it would amount to unfair labour practice under the provisions of the Industrial Disputes Act.

8. It is also the case of the petitioner Union that the management, on 11.09.2006 has put up a notice in the notice board notifying the voluntary retirement scheme of V.R.S.2006, calling upon the workers in Hosur Pest Control Division to exercise their option before 11.09.2006 and 23.09.2006, offering gold coin for the first 25 workers who opt for the scheme etc. The action of the respondent is unilateral and made without consulting the petitioner Union, which is a majority Union. There is also a threat from the management that if they don't opt for the scheme, the workers will be transferred to Jammu and in fact 73 workers so far have opted for the scheme and affixed their signatures, leaving only 26 workers remain in the Pest Control Plant, Hosur factory who are the members of the petitioner Union. It is also apprehended that pressure will be exercised on the remaining members of the Union also.

9. According to the petitioner Union, the said voluntary retirement scheme which amounts to change in the condition of service has been effected in violation of Section 9(A) of the Industrial Disputes Act. According to the petitioner Union, this will amount to closure of the factory, since the strength of the permanent workers will be reduced to 75% and without following the provisions of Section 25(o) of the Industrial Disputes Act, the closure is done in an indirect manner.

10. It is also the specific case of the petitioner Union in the affidavit that the mode of redressal under the Industrial Disputes Act, does not allow for any immediate check to the conduct of the respondent management. It is also stated that despite the various Industrial Disputes raised by the Union, the conduct of the management has become

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unchecked. The respondents are taking advantage of the delay inherent in the redressal process under the Industrial Disputes Act, and therefore, according to the petitioner Union, the writ petitions are filed challenging the V.R.S.2006 scheme by way of declaration and also forbearing the respondent management from paying pro-rata wages which according to the petitioner Union is an unfair labour practice.

11. The respondent management has filed a counter affidavit. At the out set, the respondent has raised preliminary objection that since the respondent is a private company and not amenable to writ jurisdiction and therefore, the writ petition is not maintainable. It is also the case of the respondent that the petitioner Union does not represent all the workers of the respondent factory at Hosur. According to the respondent, the workers of the Pest Control Plant, Hosur have formed a trade Union called Hosur Rekit Solmen India Employees Union, which is recognized by the respondent. It was based on the charter of demands made by the said majority union on 09.07.1998 and 21.01.1999, a long term settlement was arrived at under Section 12(B) of the Industrial Disputes Act, determining the wages, allowances, productivity and other allied matters for the period ended 31.07.2002. At the expiry of the said settlement, the recognized union submitted another charter of demand on 20.05.2002. The Hosur Rekit Benefisar (India Employees Union), which is the successor of the Hosure Rekit Solmen (India Employees Union), while appreciating the stand of the management that for the continuation of the existing pay scale, there should be commitment from the workmen to given minimum output, a proposal was made by the respondent management for commitment from the workmen including the one that they should maintain minimum output of 116 cases of red coil per machine per shift in a month corresponding output for other types of coils. It was after the workmen agreed to this output, the management agreed to continue the payment of existing emoluments and accordingly the settlement was incorporated on 27.12.2002, which was to remain upto 31.07.2005. It was in August 2004, when there was a rival fraction among the workers the petitioner union came and took up the sundry issues. It was only after the settlement was reached, the members of the petitioner Union have started, adopting go-slow method from December 2005. Since as per the settlement dated 27.12.2002, the workmen have agreed to give minimum output of 116 cases of red coils per machine per shift, the monthly average productivity per machine per shift was reckoned by dividing total output which would show that the normal manpower of the factory will not be affected. When the output per month was 116 cases of red coils per machine per shift, every workmen would be entitled for the productivity linked performance allowance of Rs.1350/- and in respect of the productivity above 116 cases for every additional case, there will be an increase of Rs.22.50 per month and the production upto 116 cases will cover normal wages and allowances. Therefore, according to the respondent, as per the agreement, if the workmen do not achieve 116 cases, they will not be entitled for incentives and if they achieve only 116 cases they will be getting the productivity linked performance of Rs.1350/- and in cases where the workmen do not

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reach 116 cases per machine per shift, their earnings will be calculated in proportion to the output of number of cases per machine per shift. It was from December 2005 based on charter demands, the workmen belong to both union have resorted to "slow down" resulting in the production going below 116 cases per machine per shift and consequently, the average monthly wages were calculated and it was found that the output during the first 20 days of December 2005 was 86 cases as against the minimum requirement of 116 cases and this was notified in the notice board by the respondent on 21.12.2005. There was a further notice on 29.12.2005 placing on record the output recorded on December 2005 below the minimum requirement of 116 cases stating that the respondent will be justified in recovering excess wages paid from December 2005 for the short fall in production.

12. According to the respondent, in spite of the notice there was no improvement in January 2006 and again there was a notice on 19.01.2006, apart from another notice followed on 20.04.2006. In February and March 2006, the workers have given up go-slow and minimum output of 116 was shown. Again they resorted to go-slow from April 2006. During April 2006 the production was only 55 cases. The management has put up another notice on 24.04.2006 and in spite of that the go slow continued and there was a failure to give minimum out put of 116 cases, with the result from April 2006 on wards the workmen were paid wages in proportion to the out put given by them. The members of the majority union having accepted their faults that they have not given production as agreed as per the agreement, they kept quite and accepted the wages for April, May, June, July and August 2006 on pro-rata basis.

13. It is also the case of the respondent that from April 2006 to 15.09.2006, the petitioner Union has also not raised Industrial Disputes. It is also the case of the respondent that the business in the Hosur factory of the respondent management has come down remarkably. The recognized union and its members have been pleading with the management for the voluntary retirement scheme. When a liberal financial assistance under the voluntary retirement scheme was provided, out of 108 workers who were on the roles of Pest Control Plant, Hosur as on 11.09.2006, 73 workers have given letters opting for V.R.S. and left the services and they have also received the V.R.S. compensation and other settlements. It is also the case of the respondent that the matters raised in these writ petitions, apart from being not maintainable can be raised in the Industrial Disputes. Especially, in the circumstance that the petitioner Union has raised innumerable disputes on various issues, there is no reason why an Industrial Disputes could not be raised in this issue also. No writ can be issued in respect of the contracts entered under Section12 (3) of the Industrial Disputes Act. According to the respondent, there is no monstrous situation, since the members of the petitioner Union who are bound by the settlement have not given the agreed production, with the result, it is as per the agreement, the pro-rata wages were sought to be paid and that was after giving many notices informing the workers and in

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spite of that the members of the petitioner Union has resorted to slow-down. The strength of the workmen as on 11.09.2006, which was 108, is now only 35. At the time of filing of the affidavit by the writ petitioner Union, and from 01.04.2006, the petitioner Union has never disputed that there is a fall in the production. For the purpose of implementing the V.R.S., there was no provision that the union should be consulted. Even though, the V.R.S.scheme has been put up and for a period more than a months time, there is no complaints from any one of the workers that they have been threatened by the officials of the respondent management to opt for V.R.S. The respondent is entitled to work out its right within the frame of the Industrial Disputes Act. It is in those circumstances, the respondent management has also prayed for the vacating of order of injunction granted by this Court on 22.09.2006.

14. Mr.V.Prakash learned Senior Counsel appearing for the petitioner Union while dealing with the maintainability of the writ petitions, which is raised as one of the main point in this case, since admittedly the respondent is a private company, governed by the provisions of the Indian Companies Act, would submit that there is absolutely no justification on the part of the respondent management in arbitrarily deducting from the wages on the basis that the minimum output stated to have been agreed by the workers by way of production upto 116 cases has not been given. This will amount to massive reduction affecting the very right of livelihood of the members of the petitioner Union. Therefore, according to the learned Senior Counsel, on the facts of the case, there is monstrous situation in existence warranting interference by this Court under Article 226 of the Constitution of India, even though, admittedly, the respondent management is a private company and the remedy is available under the Industrial Disputes Act. It is the further argument of the learned Senior Counsel that while respondent have admitted the reduction of workers which has come down from 108 to 35 in the Hosur factory and also it is not denied that 450 contract labourers employed, have been dispensed with, with the result the entire work done by the said 450 workers have also been entrusted upon the regular employees, with the result, even assuming otherwise, what was in existence at the time when 12(3) Settlement was entered, was not in existence as on said date and therefore, the respondent cannot illegally draw a conclusion that there has been a reduction in the output. When the minimum members who remain in the factory have to do all the works of the erstwhile contract labourers as also that of the maximum number of permanent workers who have left, it is absolutely impossible for the management to expect that the minimum number of workers should give the same output. It is the case of the learned Senior Counsel for the petitioner, that when there is a frustration of the object of the earlier settlement, the question of the reduction in output and consequential reduction of salary of the workers of the petitioner Union on pro-rata basis can only be termed as illegal. The learned counsel would further submit that in cases where an employee used to get salary upto Rs.8,000 or Rs.9,000 per month was paid Rs.1,500 per month as a paltry amount on the premise of pro-rata payment. It is certainly a

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monstrous situation and the court should interfere since there is a breach of public duty resulting in the very right of livelihood on the workers and their family members who will be virtually rendered without the basic requirements of food, shelter and amenities with the said paltry amounts.

15. The learned Senior Counsel would also submit that by virtue of the present pro-rata payment, the permanent workers of the petitioner Union who have been earning monthly wages have been driven to the level of the daily wageworkers. Especially in the circumstance that when the reduction of manpower is not disputed, this alteration of service condition is not merely in violation of Section 9(A) of the Industrial Disputes Act, but it is against the human norms. At the same time, the learned Senior Counsel would fairly submit that in cases of any difficulty in interpretation of any settlement entered under Section 12(3) of the Industrial Disputes Act, certainly Section 36(A) of the Industrial Disputes Act, provides a remedy for the purpose of interpretation by approaching the appropriate forum. It is also specifically admitted by the learned Senior Counsel that even if there is a breach of settlement, there can be a prosecution and penalty imposed under Section 29 of the Industrial Disputes Act. He would also specifically admit that under Section 33(c)(2) of the Industrial Disputes Act, any benefit a workmen is entitled under a settlement, he can always approach the Labour Court. Further, there can be a reference of the Industrial Dispute under Section 10 of the Act, or even an individual worker can raise Industrial Disputes under Section 2(A) of the Act. It is also not in dispute that a dispute can be referred under Section 10 of the Industrial Disputes Act, even in respect of the "unfair labour practice" as defined under Section 2(r)(a) of the Industrial Disputes Act, since under Schedule-V serial number 13, even a failure to implement the award, will amount to an unfair labour practice and the unfair labour practice is prohibited under Section 25(T) of the Industrial Disputes Act, for which the penalty is imposed under Section 25(U) of the Industrial Disputes Act, and in fact after the amendment of 1984, for unfair labour practice a prosecution can be launched under Section 29, apart from prohibition under Section 25(T) of the Act, since the breach of award is also an unfair labour practice.

16. The learned Senior Counsel would rely upon the judgement of a Division Bench of this Court rendered in Chemplast Sanmar Ltd., Vs. Mettur Chemicals Pothu Tholilar Sangam and another reported in 2000 (1) LLJ 1335 to substantiate his contention that a writ petition can be entertained under Article 226 of the Constitution of India by this Court, even in cases where there is a violation of the provisions of the Industrial Disputes Act which would amount to unfair labour practice and alteration of condition of service without following procedure under Section 9(A) of the Industrial Disputes Act, r/w Schedule-IV. That was also the case wherein, a settlement was arrived at under Section 18(1) of the Act, between the management and the workers and various unions providing for fixed on monthly payment of 56.5% of wages of April 1992 every month for a period from 01.04.1991 to 31.03.1997 along with monthly wages, apart from

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agreeing an amount of Rs.500 as a fixed dearness allowance, provident fund, gratuity, overtime and medical reimbursement benefits treating it as a fixed dearness allowance. During the period of settlement, the petitioner union gave notice, terminating the settlement and ultimately the respondent management by letter dated 05.03.1997 referring to the letter of termination of settlement by the petitioner union, has also stated that the monthly payment made under the settlement will be stopped from 01.04.1997. When the petitioner union raised the charter of demand, demanding raising of payment of 56.5% to 120%, which has not resulted in any fruitful decision. The stand of the respondent management was that since the settlement was terminated and ceased to exist from 01.04.1997, the liability to pay the monthly fixed payment also ceased. When that said conduct was questioned as alteration of condition of service without following the procedure under Section 9(A) of the Act, and also sought for a direction for continuation of the said benefits covered under the settlement dated 27.11.1992, the management has raised that the writ petition is not maintainable against the private employer, since the employer does not come within the preview of "State" under Article 12 of the constitution of India. The learned single judge has held that the writ petition was maintainable and also held that even though the settlement has expired on 31.03.1997 it will not affect the enforcement or binding nature of the same till the old settlement is replaced by a fresh settlement. It was as against the said order of the learned single judge the employer had filed the appeal in which the Division Bench in the above said case, while confirming the order of the learned single judge holding that the writ petition under Article 226 is maintainable has held as follows:

> "5. Mr.Sanjay Mohan, learned counsel for the appellant/management, strenuously contended that with the expiry of the terms of the settlement in question, the liability of the management to pay in accordance with the terms of the settlement also ceased and came to an end and the learned single Judge was in error in coming to a contra conclusion. On the question of maintainability of the writ petitions, though in the grounds it has been raised that the learned single Judge was in error in the view taken by him, learned counsel invited our attention to an earlier decision of this Court dated December 2, 1997, in W.P.No.11862 of 1996 V.Sadasivan Vs. Binny Ltd., (1998-I-LLJ-349)(Mad-DB) and admitted that the same would govern the issue relating to the maintainability against the appellant and it would be too late also for him to take an extreme stand that no writ petition as such could be maintained. Mr.K.Chandru, learned Senior Counsel appearing for the respondent/workmen, unions, placed strong reliance upon the earlier decision of the Division Bench and contended that when there is a violation of mandatory statutory provision, in this case the provisions of the Industrial Disputes Act, which protected the rights and interests of the workmen, a writ could be maintained. On a careful consideration of the respective submissions of learned

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counsel appearing on either side in this regard and on going though the relevant decisions which have been adverted to in the decision rendered in Binny's case,(Supra), we are of the view that the stand taken by the appellant that there is no monstrous situation to warrant this Court's interference in exercise of its jurisdiction under Article 226 of the Constitution of India cannot be countenanced. If a patent violation of the mandatory provisions of the Industrial Disputes Act, which would constitute unfair labour practice, and alteration of conditions of services without following the procedure laid down under Section 9-A of the Act read with the Fourth Schedule to the Act, is demonstrated to the existence of the powers of this Court to come to the rescue of the victimized workmen, cannot be seriously disputed. In our view, the ratio of the decision in Binny's case, (supra), in W.P.No.11862 of 1996 would equally apply to the case on hand and the learned single judge could not be said to have committed any error in choosing to exercise his discretion in the matter by entertaining the writ petition under Article 226 of the Constitution of India. The contention urged for the management to the contra, has no merit of acceptance and shall stand rejected."

17. According to the learned Senior Counsel, even though it is true that in a subsequent case in an identical situation, a Division Bench of this Court was of the view that in such circumstances the writ petition is not maintainable, as held by a learned single judge in that case but felt the matter to be referred to a Full Bench, as another coordinating bench in the judgement reported in 2000(1) LLJ 1335 took a view that for the violation of statutory provision, the writ petition is maintainable even against the private company. The Full Bench decision accordingly referred rendered its judgement in P.Pichumani etc Vs. The Management of Sri Chakra Tyres Ltd., reported in 2004(3) CTC 1. The Full Bench even though has arrived at a conclusion that the violations of the Industrial Disputes Act, which involves public duties alone, are amenable to the writ jurisdiction under Article 226 of the Constitution of India, has held as follows:

"11. In Chemplast Sanmar Ltd. Vs. Mettur Chemicals Podhu Thozhilalar Sangam and another, 2000(1) LLJ 1335 cited supra, the facts are quit different. There the factual position is admitted. There was a settlement under Section 18(1) of the Industrial Disputes Act, 1947 for payment of fixed monthly amount at the rate of 56.5% of wages for the circumstances stated therein. The time of the settlement expired. The question for consideration was whether after the expiry of the term of settlement the benefits under the settlement ensure to the benefit of the workmen till a new settlement is arrived at substituting the old settlement. Basing upon the law laid down by the Supreme Court in the cases referred thereto, it was held by the Division Bench that the benefit in the old settlement

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continues even after the expiry of its term till a new settlement is arrived at substituting the old one. It was also held that in not honouring the commitment to pay the amounts under the old settlement, there was alteration of service condition without notice to the employees, thus violating Section 9-A of the Industrial Disputes Act. In the case there was no dispute with regard to questions of fact and the entire matter lay on the interpretation of Section 18 of the Industrial Disputes Act, in the light of the legal principles laid down by the Supreme Court. In the instant case, the dispute is entirely different as there are serious disputed questions of fact which need to be probed, for which fact finding is necessary, which can be made only after elaborate decisions and that is only possible either before the Labour Court or by referring industrial disputes under the Industrial Disputes Act, 1947. In this regard the dicta laid down by the Supreme Court for exercising the jurisdiction and the remedy under the Special Act, i.e., Industrial Disputes Act, 1947 needs consideration."

18. According to the learned Senior Counsel for the petitioner Union, the decision rendered in the Full Bench of this Court has only distinguished the judgement reported in 2000(1) LLJ 1335, and based on the facts and circumstances of this case, it cannot be held to be a bar for maintaining the present writ petition.

19. Therefore, even assuming that the Division Bench judgement reported 2000(1) LLJ 1335 regarding the maintainability of the Writ Petition against a private company was distinguished by the Full Bench in 2004(3)CTC 1, the fact remains that the Hon'ble Full Bench has also held that apprehension of delay in adjudication by the forum created under the Industrial Disputes Act, cannot be a ground to invoke the writ jurisdiction except an action involves a public duty.

20. According to the learned Senior counsel when in respect of the maintainability of writ petition against the Cooperative Societies, a 5 Judges Bench of this Court in the judgement rendered in M.Thanikachalam Vs. Madurandagam Agricultural Cooperative Society reported 2000(4) CTC 556 has held that no writ will lie against the Cooperative Society, since it is not an instrumentality of state within the meaning of Article 12 of the Constitution of India. Ultimately, the matter was again referred to another 5 judges Bench in K.Marappan Vs. The Deputy Registrar of Cooperative Societies, Namakkal Circle, Namakkal reported in 2006(4) CTC 689. While dealing with the said situation relying upon the 7 Judge Bench judgement of the Hon'ble Supreme Court in Pradeepkumar Viswas case reported in 2002(5)SCC 111, the Hon'ble Full Bench of this Court has held that a Cooperative Society can be characterized as a "State" and any order passed by the society in violation of bye-laws can be corrected in the writ jurisdiction. The decision of the Full Bench reads as follows:

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"21. From the above discussion, the following propositions emerge:

1.(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-law can be corrected by way of Writ Petition;

2. Applying the tests in Ajay Hasia it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;

3. Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

4. A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

5. Where a Special Officer is appointed in respect of a co-operative society which cannot be characterized as a 'State' a writ would lie when the case falls under clauses (iii) and (iv) above.

6. The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterized as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a Writ petition.

7. In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

8. The decisiion in M.Thanikkachalam Vs. Madhuranthagam Agricultural Co-operative Society, 2000(4) CTC 556, is no longer good law, in view of the decision of the Seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."

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By setting aside the judgement reported in 2000(4) CTC 556 as no longer good law.

21. Therefore, according to the learned Senior Counsel for the petitioner Union, the present case is maintainable against the respondent management, which is a private company, since the consequences of the conduct of the respondent management results in a monstrous public situation and it may affect the industrial peace. According to him it is not merely breach of settlement but a monstrosity involved. The learned counsel also would rely upon the judgement of the Hon'ble Apex Court reported in 2005(6) SCC 657, to substantiate his contention that cases where there are public law elements involved, a writ of mandamus can be issued even against private wrongs. The reliance based on by the learned Senior Counsel for the petitioner Union in the said judgement rendered in Binny Ltd., and another Vs. V.Sadasivan and others reported in 2005(6) SCC 657 in which paragraph 29 runs as follows:

> "29. Thus it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do just when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol.30,p.682,
>
> "1317. A public authority is a body, not necessarily a country council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit."
>
> There cannot be any general definition of public authority or public action. The facts of each case decide the point."

22. The reference to the said judgement makes it clear that for the purpose of issuance of writ of mandamus there must be a public duty and

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there must be a public law elements involved in the action, even though, according to Halsbury's laws of England there is difficulty in distinguishing between the public and the private law. The learned Senior counsel for the petitioner Union would also rely upon another paragraph of the judgement of the Hon'ble Apex Court which runs as follows:

> "32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

23. While it is true that in the presence of public law element, a writ can be suited even against the private persons as per the said judgement, nevertheless, the Hon'ble Apex Court has also held in the same judgement about the contractual techniques and about the decision of an employer to terminate services of the employees holding that there is no public policy involved. The relevant paragraph, which reads as follows:

> "30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purpose and not unreasonably.
>
> 31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in State of U.P. Vs. Bridge & Roof Co.(India) Ltd., and also in Kerala SEB Vs. Kurien E.Kalathil. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the

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contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226."

24. The learned counsel would also rely upon another unreported judgement of K.P.Sivasubramaniam,J dated 10.06.2002 in W.P.No.20270 of 2001 etc., batch, wherein the learned judge has held that even before finding out as to whether the Industrial Disputes Act provide alternative remedy, one has to see whether the action complained is in violation of fundamental rights, statutory or public duties so as to ignore the alternative remedy and justify interference by this Court under Article 226 of the Constitution of India, by placing reliance on the judgement of the Hon'ble Supreme Court reported in AIR 1958 SC 86 and 2002(2) SCC 244. The operative portion of the learned judge relied upon by the learned Senior Counsel runs as follows:

"53. In the present case before us, undoubtedly the provisions of the Industrial Disputes Act, provide alternate remedies and we have to only see whether the acts complained amount to any violation of fundamental rights or statutory or public duties or whether the fact situation is so extraordinary and monstrous so as to ignore the alternate remedy and justify interference by this Court."

25. The learned Senior counsel also would submit that by filing the present Writ Petition, he is not seeking to enforce the settlement but on the other hand, if wages are to be decreased arbitrarily it is manifestly monstrous. In respect of the V.R.S.2006 scheme which is also under challenge by the petitioner Union, the learned Senior counsel would submit that admittedly 73 workers has gone out and remaining number of workers are around 27. It is the specific case of the petitioner Union that the idea of V.R.S. scheme is not to reduce the work force or it is not even the case of the employer to shutdown. Therefore, V.R.S.Scheme is only for the purpose of employing outsiders by contract labour and the learned Senior Counsel also would submit that there is no whisper in the counter affidavit filed by the respondent management as to whether the respondent management wants to fill up the vacancies after the employees go on under V.R.S. Therefore, according to the learned Senior Counsel, this will attract the change in service condition under Section 9(A) of the Industrial Disputes Act, and inasmuch as no procedure has been followed, it should be taken as unfair labour practice. According to him if a procedure for closing down of the undertaking is to be made the employer has to follow the provisions of Section 25(o) of the said Act, for which the application for permission is sine quo non and the condition precedent, till the permission is granted the factory must be in full strength. According to the learned Senior Counsel the introduction of the V.R.S. scheme is only to get over the difficulty of following the procedure under Section 25(o) of the Industrial Disputes Act. The learned Senior Counsel also would submit that in course of time, by way of the voluntary retirement scheme, if the number of employees come down less

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than 100 there was no need for the employer to follow 25(o) of the said Act, and therefore, it is indirectly to get over the legal requirements, the V.R.S. Scheme is used. Therefore, according to him it is malice in law and what is not permissible to be done directly is sought to be done indirectly.

26. On the other hand, Mr.A.L.Soyamajee learned Senior Counsel appearing for the respondent would submit that the writ petition as such is not maintainable. He would state that when the petitioner union has specifically admitted in the affidavit filed in support of the writ petitions that there are remedies available under the Industrial Disputes Act, even assuming that there is unfair labour practice as per Section 9 (A) r/w Schedule-IV, the rights of the petitioner union can be enforced only as per the provisions of the Industrial law and not under the common law.

27. According to the learned Senior Counsel, the concept of the alteration in the service conditions as enunciated under Section 9(A) of the Industrial Disputes Act, is unknown in common law. Therefore, the remedy can only be under the Industrial Disputes Act, since the same is an exclusive remedy. The learned Senior Counsel placing reliance on the judgement rendered by the Hon'ble Supreme Court reported in 1975(2) LLJ 445 would contend that when an exclusive remedy is provided, there is no question of right to be enforced under Article 226 of the Constitution of India. According to the learned Senior Counsel, it is not even the case of the petitioner that the right which they are raising in the writ petition is a common law remedy, for, the grounds raised are that there are unfair labour practice by breach of agreement, apart from the V.R.S. scheme intended to bye pass the provisions regarding closure.

28. According to the learned Senior Counsel, when those provisions are stated to be violated by the employer, the exclusive remedy available is only under the Industrial Disputes Act. The learned Senior Counsel would also rely upon the judgement of the Hon'ble Supreme Court reported in 2004(4) SCC 268 to substantiate his contention that in cases of exclusive remedy available under the Industrial Disputes Act, there was no question of invoking the jurisdiction under Article 226 of the Constitution of India unless a very extraordinary circumstance is in existence. The learned Senior Counsel also would submit that it is the case of the respondent management that inasmuch as the production as agreed upon by the agreement has not been shown by the workmen by resorting to the attitude of go-slow, the employer is entitled as per the agreement to pay pro-rata amount. According to him, 5 persons will be in charge of a machine to produce 116 cases. The very object of the settlement arrived was to produce the required minimum production and when the same was not done, the employer was well within the powers to reduce the salary on pro-rata basis and therefore, according to the learned Senior Counsel, there no monstrous situation in existence and even assuming there is a monstrous situation the same is the result of the

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conduct of the members of the petitioner Union in resorting to go slow attitude.

29. The learned Senior Counsel would submit that when the clause in the agreement clearly contemplates the target to be achieved by the workers as accepted by them, the validity or otherwise of such clause or to consider as to whether the employees have acted as per the clause and shown the productivity as per the agreement, all are matters involving the complicated question of fact and that cannot be decided in the writ petition. The further point as to whether, the respondent management is justified in paying the proportionate salary in cases where the workers having agreed have not given 116 cases per unit is again, according to the learned Senior Counsel, a matter to be decided on evidence and cannot be decided on affidavit under Article 226 of the Constitution of India. The learned Senior Counsel has also placed reliance on the judgement rendered in 2006(3) LLN 393, in which while dealing with Sections 9(A), 12(3) and 36(a) of the Industrial Disputes Act, when I had an occasion to deal with, I have held that the remedy available is under the Industrial Disputes Act, placing reliance on the Division Bench of this Court reported in 2005 (1) LLN 878. The learned Senior Counsel also would submit that even assuming that there has been a reduction of salary which is against the payment of Wages Act, there is an effective remedy available under Section 15(3) of the Payment of Wages Act, and the authorities under the Payment of Wages Act, have got Civil Court power and the recovery is easier. While dealing with the contention as to whether the obligation caused on the employer under Section 9(A) or under Section 2(r)(a) is a public duty, the learned Senior Counsel while placing reliance on the judgement of the Hon'ble Supreme Court 2000(1) LLJ 470 to substantiate his contention that there is no public duty caused on the respondent management in respect of violation under the Industrial Disputes Act, even assuming otherwise.

30. The learned Senior Counsel also would place reliance on the judgement of the Hon'ble Supreme Court reported in 2000(5) SCC 657 to contend that the presence of public law element is a condition precedent and according to him there is no public duty caused on the respondent management, especially, in the circumstance that the members of the petitioner Union have acted in violation of the agreement. He would also rely upon the judgement reported in 1981(2) LLJ 54, apart from the judgement rendered by Justice F.M.Ibrahim Kalifulla in W.P.No.1510 of 2000 etc., batch to support his contention that there was no monstrosity in existence. The learned Senior Counsel for the respondent would further submit that in fact the concept of monstrosity itself is not a ground for the purpose of invoking the powers of this Court under Article 226 of the Constitution of India unless it is coupled with the public law element. He would also submit that the concept of monstrosity is to be construed based on the individual cases and there cannot be a general principle of monstrosity for the purpose of invoking Article 226 of the Constitution of India. He would also submit that the case which was decided by the Hon'ble Supreme Court reported in 1976(2) SCC 82 was one dealing with the

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award of the private arbitrators, wherein considering the gravity of situation and absence of any remedy available under any law, the Supreme Court was compelled to direct interference under Article 226 of the Constitution of India. Whereas, in the present case, there is no such monstrous situation in existence. In the present case, the learned Senior Counsel would insist that there are serious disputed facts and the same cannot be decided in this proceedings.

31. According to the learned Senior Counsel on the facts of the case the scale of pay of the members of the petitioner Union remains but it is only since the production has not been given as agreed upon by the workers as per the agreement, there was a pro-rata reduction of salary. In the circumstance that the scale of pay has not been reduced and the claim of the petitioner Union is seriously disputed, it is a disputed question of fact. The learned Senior Counsel would also submit that in fact the pro-rata payment has been paid to the members of the petitioner Union from April 2006 to 15.09.2006 and the same has not been disputed. Further, according to the learned Senior Counsel, as per the terms of the agreement if the agreed 116 cases per machine per 5 workers was not given by the workers, the employer is not even liable to pay the salary but in the present case the pro-rata basis salary has been paid. As far as the V.R.S. scheme is concerned, according to the learned Senior Counsel, it is only an invitation to offer and there is no compulsion by the employer against the workmen at all. Whenever the workmen agreed for the said invitation and based on the invitation the employee makes an offer based on the invitation the same comes into effect only after the employer accepts. It does not change the condition of service and therefore, it does not even attract section 9(A) of the Industrial Disputes Act. To meet the contention raised on behalf of the petitioner that the purpose of V.R.S. scheme is to bring down the total number of employees less than 100 so as to avoid the procedure to be followed for closing down of the industry, the learned Senior Counsel Mr.A.L.Soyamajee would submit that it is not as if there is no remedy available even such closure is effected under the Industrial Disputes Act. The learned Senior Counsel also rely upon the judgement reported in 2005(1) LLJ 180 to show that the V.R.S. scheme cannot be held invalid, since the same depends upon the effective offer made by the employees and there is absolutely no compulsion. As far as the judgement relied upon by the learned counsel for the petitioner reported in 2000(4) CTC 556, the learned Senior Counsel would contend that the said judgement was referred to the Full Bench judgement of 5 judges of this Court in 2006(4) CTC 689 wherein, it was held that the judgement reported in 2000(4) CTC 556 is not good law. Therefore, according to the learned Senior Counsel for the respondent, there is no monstrosity in existence and even assuming that there is a monstrosity that itself is not sufficient to maintain the writ petition, unless there is a public law element and in the present case there is absolutely no public law element involved, apart from his contention that the issue involved is a complicated question of fact and that cannot be decided in the writ proceedings. Further, the effective remedy is available under the

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Industrial Disputes Act, which is a exclusive law and therefore, the common law itself is not applicable.

32. While reiterating the contention raised earlier, the learned Senior Counsel Mr.V.Prakash appearing for the petitioner would also submit that mere presence of alternative remedy is not the issue but the question whether it is an effective alternative remedy or not.

33. According to the learned Senior Counsel, by the conduct of the respondent management the right to receive the salary is affected which is linked to right to life which will result in the throwing out of the family members of the workers which is definitely a public issue. According to him, even the non-receiving of salary on time will result in public issue and in the process of judicial review the courts are to interfere. That apart by driving the affected persons to the Labour Court and making them to wait for years together and getting a remedy after a very long time is of no use unless the timely relief is given and therefore, to uphold a timely help, the concept of judicial review should be interpreted to be enforced even in respect of the private wrongs even if there is a small element of public duty.

34. According to the learned Senior Counsel as reiterated by him earlier there was no slow down and even if there were slow down, the employer would have already taken disciplinary action, since the same is misconduct.

35. It is also his further case that even if the employees on misconduct are kept under suspension, they are entitled for 50% of salary as subsistence allowance which is a basic right. But in the present case in the guise of breach of the terms of agreement, the members of the petitioner union who have been receiving salary around Rs.9,000/- are paid a paltry amount of Rs.1,500/- and therefore, according to him a gross injustice is done and is definitely a monstrous situation and the members of the petitioner Union cannot be driven to the normal process of law and wait for many years and by which time justice is rendered after a prolonged period there would not be any one to enjoy the fruit of the same and that cannot be the intention of the law makers. Therefore, the learned counsel would submit that the writ petition is maintainable.

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36. I have heard the learned Senior Counsel appearing for the petitioner Mr.V.Prakash as also the learned Senior Counsel appearing for the respondent Mr.A.L.Somayajee and perused the entire records.

37. At the out set as I have elicited the factual position earlier, the facts of the case makes it clear that there was originally a long term settlement regarding wages, allowances, productivity, etc., entered between the management and the workers based on the charter of demands on 27.08.1999 for the period ending with 31.07.2002. It was thereafter,

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based on the demands made by another union another settlement was arrived at under Section 12(3) of the Industrial Disputes Act, on 27.12.2002 which was to remain valid till 31.07.2005. Even though the petitioner Union was not be a party, it is not in dispute that such agreement is binding on the members of the petitioner Union also. It is also not in dispute that even after the expiry of the period of the said settlement dated 27.12.2002 which was in operation till 31.07.2005, there was no fresh agreement replacing the same. The reason for the entering of the said agreement dated 27.12.2002 is stated to be that a demand was made for the purpose of increase in wages in which circumstances the employer insisted for certain commitments from workmen and one such commitment was that the workmen must maintain the minimum output of 116 cases of red coil per machine per shift in a month etc. In this regard some of the terms of the memorandum of settlement entered under Section 12(3) of the Industrial Disputes Act, dated 27.12.2002 are relevant. The preamble of the said agreement among many other clauses also contained the following clause, which runs as follows:

> "Whereas, in the discussions that ensued the Management informed the union that it must bear in mind the competitive wages paid by the Management in comparison with the industry, the difficult phase that the company is undergoing, the depressed market condition and increasing competition in the Fast Moving Consumer Goods market where Reckitt Benckiser (India)Ltd., also operates.
>
> Whereas, the Union on its part has assured their co-operation to increase productivity, quality, and take active role in cost reduction. As part of this exercise, the Union has agreed to enter into a productivity agreement with the Management.
>
> Whereas, the Management and the Union although came to an understanding on almost all the demands contained in the Charter of Demands of the Union, on certain issues the parties could not arrive at a settlement, and ..."

38. The said agreement also contains a clause relating to productivity-linked allowance. The relevant portion of the clause 10 is as follows:

> "X. PRODUCTIVITY LINKED ALLOWANCE
>
> All permanent workmen shall be paid Productivity Linked Allowance as per the details mentioned in Annexure 'D' & 'E'.
> Production of Coils:
> Productivity Linked Allowance is payable only for achieving 149 cases of 60 inners of Green coils and 116 cases of 60 inners of Red coils per stamping machine per shift. This amount will not be payable if the productivity falls below the productivity level mentioned above.
>
> The details of productivity calculation will be shared with Union on monthly basis."

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39. That apart, many incentives have also been provided under the said agreement. The productivity chart which is stated to be Annexure-D in respect of red coil about which we are concerned and it formed part of the said 12(3) Settlement, runs as follows:

| RED COILS | Points per outer per stamping machine shit | Cases of 60 inners per stamping machine shift (final output net of broken coils) | PI | PLA | APE |
|---|---|---|---|---|---|
| Base level | 0.00 | 116 | 0 | 950 | 1800 |
| | 22.5 | 117 | 22.50 | 950 | 1800 |
| | 22.50 | 118 | 45.00 | 950 | 1800 |
| | 22.50 | 119 | 67.50 | 950 | 1800 |
| | 22.50 | 120 | 90.00 | 950 | 1800 |
| | 22.50 | 121 | 112.50 | 950 | 1800 |
| | 22.50 | 122 | 135.50 | 950 | 1800 |
| | 22.50 | 123 | 157.50 | 950 | 1800 |
| | 22.50 | 124 | 180.00 | 950 | 1800 |
| | 22.50 | 125 | 202.50 | 950 | 1800 |
| | 22.50 | 126 | 225.00 | 950 | 1800 |

40. While the case of the respondent management is that as it is also admitted, as on date the petitioner Union has got 27 members and nearly more than 70 workers have opted for V.R.S. scheme. The case of the petitioner Union is that when the agreement entered under 12(3) of the Industrial Disputes Act, on 27.12.2002, the total number of workers in existence at that time was nearly 120 permanent workers, apart from 450 contract workers. It was under those circumstances, the contract was entered promising to give a production level as stated in the said agreement. However, the case of the petitioner Union is that subsequently, the said 450 contract employees have been sent out in the Hosur factory with the result, the base works done by the all those 450 workers were compelled to be done by the permanent workers. Further the respondents have solely reduced the permanent workers strength also in the name of the V.R.S. scheme and after 73 workers have opted under the V.R.S. scheme there are only 26 workers remain as on date. Therefore, according to the petitioner Union, what was agreed on 27.12.2002 under Section 12(3) of the Industrial Disputes Act, and the situation in existence at that time is not available as on today and it is due to the dispensing with of the contract workers and also reducing the permanent workers to a far minimum of 26, the natural consequence is that the production target could not be achieved by the workers of the petitioner Union. This is nearly a legal frustration and therefore, it cannot be said as if the petitioners have slowed down and that cannot be the reason or justification for

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reducing the salary by payment of pro-rata salary to the members of the petitioner Union.

41. On the other hand, it is the specific case of the respondent management in the counter affidavit that what was agreed under the Settlement dated 27.12.2002 was a minimum output of 116 cases of red coils per machine per shift, it is to calculate the average per machine output per shift, the output of every day is divided by number of machines and thereby the output per machine per day is calculated. The monthly average productivity per machine per shift is reckoned by dividing total output by the total number of machines days operated in the month. According to the respondents, when the output per month is 116 cases per machine per shift, then every workmen is entitled to a productivity linked performance allowance of Rs.1,350/- etc. Therefore, according to the respondent management, the average machine output per shift in a month will not be affected by the variation in the number of machines or the normal manpower in the factory. Otherwise, it is the specific case of the respondent management that even after reduction of manpower, the target of productivity per machine per shift cannot change.

42. According to the learned Senior Counsel appearing for the respondent management 5 workers are in charge of each machine and therefore, by reduction of the manpower, there is no chance of reduction of productivity linked performance allowance, if the workers in each of the machine have done their work in accordance with the terms of the agreement. It is also the case of the respondent management that as per productivity figure, it was 87 cases in December 2005 and it was 103 in January and in fact in February and March 2006 it was as per the target of 116 cases per machine per shift for 5 workers. However, subsequently, from April 2006 onwards it has gradually come down and in October 2006 it has come to the lowest level of 15 cases. Productivity figure relied upon by the respondent management is as follows:

"PRODUCTIVITY FIGURES

| Year | Month | Red(12 Hrs Coils) |
|---|---|---|
| 2005 | December | 87 |
| 2006 | January | 103 |
| | February | 116 |
| | March | 116 |
| | April | 61 |
| | May | 76 |
| | June | 61 |
| | July | 68 |
| | August | 49 |
| | September | 36 |
| | October | 15 |

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43. Therefore, according to the respondents, it is only due to the attitude of the members of the petitioner Union in solwing down and not acting in accordance with the terms of the agreement that resulted in the low production. On reference of this rival contention, I have no hesitation to come to the conclusion that in fact a factual dispute regarding the production, productivity, reason for low production and necessarily the reason for the same cannot be decided by referring to the affidavits filed by the rival parties and the same requires the appreciation of the factual circumstances, apart from the evidence which may be available.

44. Now, one of the reasons given by Mr.V.Prakash learned Senior Counsel appearing for the petitioner Union, in approaching this Court under Article 226 of the Constitution of India is that by the inherent defects in the system, by driving the members of the petitioner Union to Labour Court, even if a remedy is effective, by the inherent delay, virtually the timely relief to the members of the petitioner Union will be denied and therefore, the Writ Petition is maintainable.

45. While dealing with the effectiveness of the remedy available under the Industrial Disputes Act, and also the resolution of dispute in an effective manner, apart from dealing with the same cost wise the Hon'ble Supreme Court has held in the judgment rendered in Premier Automobiles Ltd. Vs. Kamlekar Shantharam Wadke reported in 1976(1) SCC 496. The celebrated words of the Hon'ble Apex Court regarding the basis of the Industrial Disputes Act, and effectiveness of remedy available therein are in the following terms:

> "a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill-afford. The procedures followed by civil courts, it was thought, would not facilitate a promote and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in

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a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them." (emphasis is mine)

46. It is the common knowledge that the very object of the Industrial Disputes Act, is not only for the purpose of amicable settlement of disputes between the employees and employer but it is to give an easy, effective and speedy remedy. A reference to the entire concept of the act would reveal the basic idea of creating such statute, as it is aptly pointed out by the Hon'ble Apex Court in the judgment referred to above. Merely because in course of time due to various reasons including the large number of filing of cases, apart from the awareness created among the litigants including the workers, the workload of the authorities constituted under the Industrial Disputes Act, has increased enormously and it is due to that inherent reason, the authorities under the Act including the Labour Courts are not able to decide the issues within the specified period. That alone cannot be the reason for the purpose of denying benefits under the celebrated law like that of the Industrial Disputes Act. If the contention of the learned Senior Counsel Mr.V.Prakash for the petitioner Union is accepted that it is due to the reason of inherent delay in the Labour Court, the parties should be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, it means indirectly denying of the effective remedy available to the members of the petitioner Union under the Industrial Disputes Act, especially in the circumstance, as pointed by the Hon'ble Apex Court that the forums under the Industrial Disputes Act, are empowered to grant such relief appropriate. As it is stated, that they can make and remake contract, settlements, wage structures and what not. There is no other opt word than the same given by the Hon'ble Apex Court. The wordings of the Hon'ble Apex Court complement the basis of the Industrial Disputes Act. At this juncture, I am obliged to point out an equally effective wording of the Full Bench judgment of this Court headed by Hon'ble V.Subashan Reddy, C.J.(as he then was) rendered in P.Pitchumani Vs. The Management of Sri Chakra Tyres Ltd., Madurai-2 reported in 2004(3) CTC 1 which runs as follows:

"13. The apprehension of delay in adjudication by the forums created under I.D. Act cannot be a ground to invoke Writ jurisdiction. As already stated above, Writ jurisdiction can be invoked only when an action involves a public duty. However, in appropriate cases, the High Court can always fix a time for adjudicating the disputes. In some cases, as the employees have failed to comply with the orders of transfer by joining at the transferred places, they have been dismissed from service without holding any enquiry. In those cases, the matter has to be viewed with some mercy and there is no need for emphasis that justice should always be tempered with mercy."

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47. The Hon'ble Division Bench has ultimately laid down as follows in the concluding paragraph:

"14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under Section 10 of the I.D. Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect of such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony."

48. When admittedly, the remedy is available under the Industrial Disputes Act, the only reason adduced for approaching this Court by the petitioner Union is delay inherent in the redressal process under the Industrial Disputes Act, which I have stated above, I have no hesitation to come to the conclusion, that the contention raised by the learned counsel for the petitioner Union in this regard cannot be accepted.

49. Admittedly, as contended by the learned Senior Counsel for the petitioner Union himself that in respect of the grievances raised by the petitioner Union in these writ petitions, the remedy is available under

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the Industrial Disputes Act. Regarding the terms of settlement, if the contention of the petitioner Union is that as per the settlement entered under 12(3) of the Industrial Disputes Act, dated 27.12.2002 the binding nature of the same is not in dispute, Section 36(A) of the Industrial Disputes Act, provides for a remedy. Section 36(A), which runs as follows:

> "36A. Power of remove difficulties.-
> (1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.
> (2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties."

50. Therefore, when it is the case of the petitioner Union that the settlement does not empower the employer to reduce the salary, the same is certainly relating to the interpretation of the provisions of the settlement and a reference can always been made by raising an Industrial Disputes.

51. Further, if the case of the petitioner Union is that there is a breach of settlement, Section 29 of the Industrial Disputes Act, gives a remedy which runs as follows:

> "29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the fist, and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach."

52. That apart, a remedy may be available to the workers under Section 33(C)(2) of the Industrial Disputes Act, also for recovery of benefits due from the employer. On the other hand, if the conduct of the employer is treated as an unfair labour practice which is defined under Section 2(r)(a) of the Industrial Disputes Act, as

> " "unfair labour practice" means any of the practices specified in Fifth Schedule;"

53. The V Schedule, while narrating unfair labour practices includes in Clause 13 "failure to implement award, settlement and agreement" and therefore, treating it as an unfair labour practice, an Industrial

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Disputes can be raised under Section 10 of the said Act. On the other hand, if the case of the petitioner Union is that by resorting to V.R.S. scheme, the procedure contemplated for the purpose of closing down of undertaking under Section 25(o) of the said Act, is attempted to be given a go bye by the employees, it is always open to the petitioner Union to challenge the same, even if close down is effected.

54. Further, as pointed out by the learned Senior Counsel for the petitioner Union himself, since Section 25(T) of the Industrial Disputes Act, prohibits commission of any unfair labour practices, there is a penalty contemplated under Section 25(U) of the Act which are in the following terms:

> "25(T). Prohibition of unfair labour practice.- No employer or workman or a trade union, whether registered under the Trade Union Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.
>
> 25(U). Penalty for committing unfair labour practice.- Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both."

55. In the light of the above said position, it can never be said that due to the delay in the process of Industrial adjudication, the petitioner should be permitted to file the Writ petitions. That was the decision of the Hon'ble Apex Court reported in 2005(1) LLN 878, in the following terms:

> "Head the learned counsel appearing on either side. It appears that the first respondent-union has filed the writ petition against the appellant, alleging violation of the provisions of S.9A of the Industrial Disputes Act, 1947 (in short I.D.Act) while altering the service conditions of its members. It is well settled principle that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under that Act. In the present case, the grievance of the first respondent is that the provisions of S.9A of the Industrial Disputes Act where breached by the appellant. If that is so, the first respondent's remedy is by approaching the appropriate forum created under the I.D.Act., viz., Board or Labour Court, or Industrial Tribunal. Though there is a plethora of case laws on this point, we would rely only on two decisions of the Supreme Court."

56. Following the law laid down by the Hon'ble Apex court, I have held in the judgment rendered in Minerals workers' Union of India Rare Earths ltd., Manavalakuruchi Vs. Head M.K. Plant, Indian Rare Earths, Ltd. and another reported in 2006(3) LLN 393 that when the effective alternative remedy is available under the Industrial Disputes Act, the

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invoking of the powers of this Court under Article 226 of the Constitution of India is not permissible in the following terms:

> "29. Therefore, in my considered view, the writ petition for the purpose of interpretation of the words of the settlement entered on 8 December 2005 is not maintainable in the circumstance that there is an effective alternative remedy available under the Industrial Disputes Act either under S.9A or as provided under S.36A of the Industrial Disputes Act."

57. The next point that has to be considered in this case, as vehemently contended by the learned Senior Counsel for the petitioner Union is as to whether there is any monstrous situation in existence on the facts and circumstances of these cases and if so whether monstrous situation itself is a ground for the purpose of interfering under Article 226 of the Constitution of India etc. Even though, it is not necessary to consider this aspects, since I have arrived at a conclusion that an effective alternative remedy is available, since the points raised by the learned Senior Counsel Mr.V.Prakash is of some importance, I am constrained to consider the said point.

58. The concept of monstrosity was for the first time formulated in a different angle by the Hon'ble Apex Court in the judgment rendered in Rohtas Industries Ltd., and another Vs. Rohtas Industries Staff Union and others reported in 1976(2) SCC 82. It was in that case the Hon'ble Apex Court had occasion to discuss about the rule of common law apart from the permissibility of Article 226 of the Constitution of India even against a private individual. The facts of the case before the Hon'ble Apex Court was that there was strike in the industry due to inter union rivalry. The strike ended due to a memorandum of agreement dated 02.10.1957 between the management and also two registered unions and also unregistered unions. It was as per the agreement which was under Section 10(A) of the Industrial Disputes Act, which provided for a reference to an arbitration of the employees claim for wages and salaries for the period of strike and companies claim for compensation for losses due to strike. The arbitrator passed an award to the following effect:

1) That the workmen participated in the strike are not entitled to wages and salary for the period of strike
2) That the company do recover from the workmen participating in the strike compensation assessed at Rs.80,000/-
3) That the workmen jointly and severally do pay to the company 1/8th of the total costs of the arbitration. In default of payment the company will be at liberty to recover the same in such manner as it thinks fit.

59. It was in respect of the portion of the award of arbitrators in directing the workmen to pay compensation to the employer, the Writ petition was filed and the High Court has set aside the said portion of the award against which the management has filed a special leave petition before the Hon'ble Apex Court. One of the point urged was that an award under Section 10(A) of the Industrial Disputes Act, is one of the private

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arbitration and the same was not amenable to the writ jurisdiction under Article 226 of the Constitution of India. While dealing with the said contention, the Hon'ble Supreme Court for the first time held that the extraordinary jurisdiction of the High Court will not normally be extended beyond the limits except in cases of monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The wordings of the Hon'ble Supreme Court in this regard are as follows:

> "9. The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose - even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the residence of such person'. But it is one thing to affirm the jurisdiction, another to authorize its free exercise like a bull in a china shop. This court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstance cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."

60. Therefore, in that case when the private arbitrators have awarded compensation against the workmen during the period of strike which is unknown not only for the reason that it is against the concept of labour legislation but also in the circumstance that there were no adequate remedies available against such an order and where there was an error of law on the face of the award and therefore, the Hon'ble Apex Court was pleased to hold authoritatively

"admittedly, such an award can be upset if a apparent error of law strains its face"

by adopting the Halsbury's laws of England as sound statement of the law. Therefore, while holding that normally the writ jurisdiction would not be extended towards a private individual the Hon'ble Apex Court has extended the same on the above said monstrous situation, even against the private arbitrator's award, considering the seriousness of the consequences of such award passed by the private arbitrators. It was subsequently in the judgement rendered in Gujarat Steel Tubes Ltd Vs. Gujarat Steel Tubes Mazdoor Sabha reported in 1980(1) LLJ 137, the Hon'ble Supreme Court again dealing with the power under Article 226 of the Constitution of India, while holding that normally the High Court will be disinclined due to the traditional limitations there are exceptions were gross injustice or fatal

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illegality are available at large. The Hon'ble Supreme Court has crisply put the terms in the following manner:

> "80. The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while Art, 226 has been inspired by the royal writs, its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution - framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Art. 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."

61. It was following the said trend, set in motion by the Hon'ble Apex Court, in a case of termination of a lady teacher in a private school recognized by the Government, on the ground she got married, this Court presided over by the Hon'ble Justice Mohan, as he then was, having found that normally writ Court negative relief if the matter falls within the realms of contract if it requires evidence. Factually in the above said case which does not require evidence the Court has come to the conclusion that such conduct is opposed to the public policy, since a teacher would lose her service on her getting marriage would be violative of Article 21 of the Constitution of India. As held that "the right to personnel life and liberty enshrined under Article 21 of the Constitution of India must receive its full scope and meaning and therefore, the resolution of this character would be violative of Article 21". That was the judgement rendered in M/s.Sivanarul Vs. State of Tamil Nadu rep.by its Secretary, Department of Education, Madras 9 and others reported in 1985(2) LLJ 133. Following that in yet another case decided by this Court in C.Marianandam Vs.Government of Tamil Nadu and others reported in 1989 I LLJ 269, wherein, a teacher of the minority aided school governed by the Tamil Nadu Recognized Private School (Regulation Act, 1973), was terminated from service without notice or enquiry, however, framing a grave charge that he has misbehaved with a lady teacher, was using bad words when speaking to students an so on. In such circumstances, the Hon'ble Justice M.Sreenivasan, as he then was, by referring to the judgement of the Hon'ble Apex Court rendered in Rothas Industries stated above has held that there is a monstrosity of situation in the following words at page 274:

> "In my view, the monstrosity of the situation in the present case would undoubtedly warrant the issue of writ to the third respondent even if it is a private institution. On the admitted facts of the case, it is seen that the services of the Headmaster

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of the School are terminated on a very serious charge of misbehaviour with a lady teacher and other charges without giving an opportunity to him to deny the same. It is a shocking state of affair that the management of an educational institution should throw to the winds the elementary principles of natural justice in dealing with the Headmaster, who is at the helm of affairs on the academic side. This is a case in which the Court should exercise its prerogative power and would be failing in its duty if it chooses to remain a witness to the situation on the ground that the third respondent is not a statutory authority."

62. While dealing with the enforceability of a settlement under Section 12(3) of the Industrial Disputes Act, or 18(1) of the Industrial Disputes Act, under Article 226 of the Constitution of India, while holding that the writ petition is not maintainable as against the private company, the Hon'ble Division Bench of this Court in the judgement rendered in Madras Labour Union represented by its President, Madras 12 Vs. Binny Ltd., Madras 1, reported in 1995(1) CTC 73 has laid down certain propositions in respect of the exercise of jurisdiction under Article 226 of the Constitution of India which runs as follows:

"48. On an analysis of the above rulings, the following propositions emerge:-

1. A private body which is not a "State" within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of the Constitution.

2. A writ will issue against a private body to protect the fundamental rights declared under part III of the Constitution of India.

3. A writ will issue in extra-ordinary circumstances if the monstrosity of the situation warrants it.

4. A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is public duty.

5. The implementation of a settlement under Section 12(3) of the I.D. Act is not public duty and no writ will lie against a private body.

6. If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Article 226 of the Constitution could be exercised to quash settlement under Section 18(1) or Section 12(3) of the I.D. Act."

63. No doubt true that one such proposition which has emerged from the Division Bench is that a writ will lie in extraordinary circumstances of the existence of monstrosity of the situation, as correctly pointed out by Mr.A.L.Soyamajee learned Senior Counsel appearing for the respondent management that the Hon'ble Supreme Court in the judgement in U.P.State Cooperative land Development Bank Ltd., Vs. Chandra Bhan Dubey and others reported in 1999(1) SCC 741, has held that Article 226 does not admit any limitation on the powers of the High Court for exercise of jurisdiction.

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While dealing with the various decisions, it was formulated that "Article 226 can be exercised only when a body or authority, the decision of which is complained was exercising its power in the discharge of public duty and that writ is a public law remedy" has nevertheless held at page 758 "the High Court does not interfere when an equally efficient alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bye pass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "Bull in a China Shop" in the exercise of its jurisdiction under Article 226".

64. Again in the case of V.S.T. Industries Ltd., Vs. V.S.T. Industries Workers' Union and others reported in 2000(1) LLJ 470 while narrating the authoritative views expressed in Desmith, Woolf and Jowells judicial review of administrative action and narrating the following propositions contained therein namely:

> " (1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.
>
> (2) The principles of judicial review prima facie govern the activities of bodies performing public functions.
>
> (3) However, not all decisions taken by bodies in the course of their public functions are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function;
>
> (a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and
>
> (b) Where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of the contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic Tribunals) has been agreed by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute."

65. While dealing with the direction of the High Court under Article 226 of the Constitution of India against a company incorporated under the companies Act has again held that it is only in cases where a company namely a private person discharging a public duty Article 226 of the Constitution of India can be invoked, in the following terms:

> "7. The High Court has relied very strongly on the decision of a learned single Judge in T.Gattaiah's case (supra) wherein it was

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stated that a writ may lie under Article 226 of the Constitution against a Company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and the contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 226 of the Constitution. In Anadi Mukta's case (supra) this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under Section 46 of the Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its work-force unlike a provision where Pollution Control Act makes it obligatory even on a private limited company not to discharge certain effluents. In such cases public duty is owed to the public in general and not specific to any person or group of persons. Further the damage that would be caused in not observing them is immense. If merely what can be considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will amount to public duty. Thus, we are of the view that the High Court fell into error that appellant is amenable to writ jurisdiction."

66. It was in one of the later judgement of the Hon'ble Apex Court rendered in Binny Ltd and another Vs. V.Sadasivan and others reported in 2005(6) SCC 657 it was held that a writ could be issued against a private authority who discharge public function, however, holding that it is difficult to draw a line between public function and private functions when they are being discharged by a private authority and ultimately decided that the facts of each case are to be considered for deciding the point. The Hon'ble Supreme Court has again quoted the importance of public function performed by private authority for invoking the jurisdiction of the High Court under Article 226 of the Constitution of India in the following words:

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that

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a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so."

Ultimately, in the said judgement the Hon'ble Supreme Court has laid down the law as follows:

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of variouis rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., vol.30, p.682,

"1317. A public authority is a body, not necessarily a country council, municipal corporation or other local authority, which has public or statutory duties to perform and which

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perform those duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

30. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or government authorities at all levels are increasingly employing contractual techniques to achieve their regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but in normal circumstances, judicial review principles cannot be used to enforce contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably.

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases wee purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this court in State of U.P. Vs. Bridge & Roof Co.(India)ltd. and also in Kerala SEB Vs. Kurien E.Kalathil. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

32. Applying these principles, it can very well be said that writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

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67. As I have already elicited in the beginning of this judgement that the Hon'ble Apex Court in the judgement reported in 1976(1) SCC 496 (Premier Auto Mobile Ltd case) has laid down the law that the remedy under the Industrial Disputes Act, is effective.

68. Therefore, an analysis of entire case laws on the subject result in some of the propositions namely,

1) A writ jurisdiction of the High Court under Article 226 of the Constitution of India is normally available against the state,
2) It is extended even in respect of private persons but performing public duties and there is in existence a public law elements,
3) It is extended in cases where a monstrous situation is in existence and there was no remedy available elsewhere which in effect result in violation of public policy at large.

69. Therefore, it is clear, to enforce a writ against a private person there must be a monstrosity in situation coupled with the disability or inability of the party from having any effective remedy along with a public law element. It goes without saying that mere existence of monstrous situation is not sufficient, for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

70. As I have analysed on the facts and circumstances of the case on hand, by the conduct of the employer either in introducing V.R.S. scheme or by paying salary on pro-rata basis based on a 12(3) settlement that itself is not a monstrous situation for the reason that there is no public law element in existence, apart from the fact that more effective remedies are available under the Industrial Disputes Act. This can never be compared with the case wherein the private arbitrators passed an award under Section 10(A) of the Industrial Disputes Act, by imposing compensation against the workmen in favour of the employer for resorting to strike. That was really a case opposed to the principles of public policy and basic principles of Industrial law, whereas in the present case as I have already stated earlier whether there is a monstrous situation in existence is in doubt. Even assuming that a monstrous situation is in existence as it is contended by the learned Senior Counsel for the petitioner, that by reducing the salary of the petitioner Union to a petty minimum extent even much below the subsistence allowance which the workers would have been otherwise entitled, it is yet to fund out as to who is response for the monstrous situation as per the terms of the 12(3) settlement which certainly requires an application of evidence since the same depends upon the complicated facts and the same cannot be decided on referring to the affidavit under Article 226 of the Constitution of India.

71. Therefore, in my considered view, the dispute in issue in this cases are to be resolved only by resorting to the remedies available under the Industrial Disputes Act which are effective and therefore, there is no question of invoking Article 226 of the Constitution of India. It is no doubt true that as pointed by the learned Senior Counsel for the

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petitioner Union, the monthly salary of the members of the petitioner Union for October 2006 is shown as remarkably low as it is seen in the chart filed on behalf of the writ petitioner. But on the other hand it is disputed by the learned Senior Counsel for the respondent management, stating that apart from the fact that the payment is on pro-rata based on the terms of the 12(3) settlement, the said net salary mentioned in the chart produced by the petitioner Union is after deducting lawful deductions like E.S.I., L.I.C., etc. In the light of this objections, even assuming that the very low salary has been paid and that may result in dislocation of the family members of the petitioner Union in various manner in their daily walk of life, unfortunately, the same requires appreciation of evidence and construction of the terms of the agreement including the validity of the same as correctly pointed out by the learned Senior Counsel appearing for the petitioner Union himself.

72. It is to be noted that under almost the exactly similar circumstance, the batch of writ petitions have been filed before this Court on the same prayer in W.P.No.15510 of 2002 etc., batch and the Hon'ble Justice F.M.Ibrahim Kalifulla has extensively dealt with the entire case laws on the subject and ultimately held as follows:

> "68. On an analysis of the above stated legal position, it has become crystal clear that when the extraordinary jurisdiction of the High Court under Article 226 is sought to be invoked, the exercise of it can be made only on the basis of the above set out principles, namely, whether the exercise of it against a private body is warranted having regard to the nature of obligation to be performed by it or its failure to perform it by virtue of any statutory prescription. In this context, the other judgement of the Hon'ble Supreme Court reported in 1996 (2) LLN 965 can also be usefully referred to, wherein, when the writ jurisdiction was sought to be invoked based on Section 46 of the Factories Act, read along with Chapter V-B of the Industrial Disputes Act, 1947, the Hon'ble Supreme Court made it clear that the writ remedy cannot be resorted to against a Private Body.",

holding that the Writ Petition is not maintainable based on the legal position in existence which is exactly similar to that of the present case.

73. In view of the same and for the reasons stated above, I am of the considered view that the writ petitioner can only resort to remedies available under the Industrial Disputes Act, and the writ petitions filed are not maintainable and liable to be dismissed and accordingly, the writ petitions are dismissed, making it clear that in the event of the petitioner Union approaching the Labour Court, the Labour Court shall,

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considering the seriousness of the situation dispose of such petitions expeditiously by giving top priority. No Costs. Consequently, connected W.P.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

+ 1 CC To Mr. T.S.Gopalan Advocate SR NO. 58455

+ 2 CCs to Mr. G.Rama Priya Gopalakrishnan, Advocate SR NO 58588, 58589

W.P.Nos.34269 & 34270 of 2006
and W.P.M.P.Nos.1 & 2 of 2006

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